

FEDERAL COMMUNICATIONS COMMISSION

FILE

Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

January 19, 2006

Robert Lewis Thompson, Esq.
Smithwick & Belendiuk, PC
5028 Wisconsin Ave., NW, #301
Washington, D.C. 20016

Re: WDLF Licensed Subsidiary, LLC
FY 2005 Regulatory Fee Waiver Request
Fee Control No. 00000RROG-06-005

Dear Mr. Thompson:

This is in response to your request dated August 31, 2005, for a waiver of the regulatory fees for Fiscal Year (FY) 2005, filed on behalf of WDLF Licensed Subsidiary, LLC (WDLF), licensee of stations WDLF-TV, Key West, Florida, WDLF-CA, Pompano Beach-Miami, Florida, WGEN-LP, Miami, Florida, and six affiliated TXs (W54BB and W64AN, Rock Harbor, Florida, W38AA, W63AL, and W65AP, Marathon, Florida, and W39AC, Key West, Florida), on the basis of financial hardship. Our records reflect that you have not paid the FY 2005 regulatory fees. As explained in more detail below,

You state that WDLF is in "dire financial straits" and that the company experienced a net operating loss of nearly \$1.9 million during the first six months of 2005.¹ In support, you submit a document entitled "WDLF Broadcasting Company LLC Profit and Loss January through June 2005" (*Profit and Loss Statement*). You state that the net operating loss shown on the *Profit and Loss Statement* does not include payments to principals, depreciation expenses, or amortization charges.² You also state that "no officer or member of WDLF LLC has ever been paid a salary."³ You further state that WDLF's 2004 federal tax return reflects that it experienced a net loss for all of 2004.⁴ Noting that primary station WDLF-TV was acquired by the current owners in 2003 and that its formerly "infomercial" programming was re-launched less than 24 months ago, you maintain that the station "already has had to cancel certain of its acclaimed [local, primetime] programming because of unforeseen operating losses," that the licensee "is striving to cut expenses further," and that "a forced payment of FCC regulatory fees likely could contribute to the need for further programming cutbacks."

¹ Request for Fee Waiver and Petition for Deferment from Robert Lewis Thompson, Smithwick & Belendiuk, PC, to Secretary Attention Mark Reger, CFO, Office of Managing Director (August 31, 2005) (WDLF Request).

² Id.

³ Id.

⁴ Id.

In establishing a regulatory fee program, the Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee. The Commission therefore decided to grant waivers or reductions of its regulatory fees in those instances where a "petitioner presents a compelling case of financial hardship." See *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995). In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits, and considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.⁵ Thus, even if a station loses money, any funds paid to principals, deductions for depreciation or similar items are considered funds available to pay the fees.

Our review of the record, including the *Profit and Loss Statement*, indicates that WDLP experienced a financial loss of \$1,955,773.57 in the January through June 2005 time period, exclusive of any charges for depreciation and amortization, or compensation paid to its principals and officers. Given that WDLP suffered a financial loss in the January through June 2005 time period, we grant your request for a waiver of the regulatory fees for FY 2005.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark A. Reger
Chief Financial Officer

⁵ See 47 CFR §1.1166.

WTS #: 3595

**Before the
Federal Communications Commission
Washington, DC 20554**

RECEIVED

AUG 31 2005

**Federal Communications Commission
Office of Secretary**

In the Matter of

Request for Fee Waiver and Petition
For Deferment

WDLP-TV et al., Key West, FL

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Fee Control No. _____

To: Secretary
Attn: Mark Reger, Office of Managing Director (Room 1-A625)

**REQUEST OF WDLP LICENSED SUBSIDIARY, LLC
FOR WAIVER OF 2005 FCC REGULATORY FEES
AND PETITION FOR DEFERMENT**

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Counsel for WDLP Licensed Subsidiary, LLC

2008 670432

August 31, 2005

Request of WDLP for Waiver of 2005 Regulatory Fees and Petition for Deferment

WDLP Licensed Subsidiary, LLC ("WDLP"), ¹ licensee of WDLP-TV, Channel 22, Key West, FL, WDLP-CA, Pompano Beach-Miami, FL, WGEN-LP, Miami, FL, and six affiliated TX's ("Stations") throughout the Miami-Ft. Lauderdale DMA, ² respectfully submits this **Request for Waiver of 2005 Regulatory Fees and Petition for Deferment** ("Request"). ³ The total amount of fees at issue for these stations is approximately \$ 4,885.20.

In establishing a Congressionally-mandated regulatory fee program a decade ago, the FCC recognized that, in certain instances, the payment of a regulatory fee may impose an undue financial hardship upon a licensee. Accordingly, the FCC's adoption of a regulatory fee scheme expressly included the opportunity in appropriate cases for the FCC to grant a waiver of its fee requirements where a "petitioner presents a compelling case of financial hardship." See Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5344 (1994), recon. granted, 10 FCC Rcd 12759 (1995). In its decision on reconsideration, the Commission explained that a waiver would be appropriate only when "the impact of the regulatory fee will affect a regulatee's ability to serve the public." Id., 10 FCC Rcd at 12762 at para. 13.

In reviewing a Petitioner's evidence as to "financial hardship," the FCC relies on a licensee's "cash flow," as opposed to the entity's "profits" in determining whether the

¹ WDLP consummated a Form 316 pro forma transfer of control of the subject licenses last month, to satisfy a requirement of a Lender who provided a needed loan this summer for the financially strapped Licensee. See Affidavit of Robin De La Pena, attached hereto as Appendix A.

² The TX's are W54BB and W64AN (both Rock Harbor, FL); W38AA, W63AL and W65AP (all Marathon, FL); and W39AC, Key West, FL.

³ The Petition for Deferment is appropriate because WDLP is seeking to "toll" the payment of the disputed fees pending resolution of its Request. See 9 FCC Rcd, infra, at 4354 para. 34,

station(s) lack sufficient funds to pay the regulatory fees and maintain service to the public. Thus, (a) funds paid to principals, (b) any deductions for "expenses" such as depreciation or amortization and (c) similar non-cash items that do not affect "cash flow" must be excluded in any petitioner's financial showing of "hardship."

In support of WDLP's Request, the Licensee submits a Profit and Loss Statement, prepared by one of WDLP's officers in direct consultation with the LLC's certified public accountants, which establishes that the LLC suffered a net operating loss of approximately \$1.96 million dollars during the first six months of 2005. See Appendix A and Attachment 1 thereto. As shown in WDLP's January-June 2005 P&L, the net operating loss for WDLP does NOT include any payments to principals, any depreciation expenses, or any amortization charges. Id.⁴ The proper exclusion of those non-cash expense items is separately attested to by the P&L's sponsoring LLC member. Id. Moreover, no officer or member of WDLP LLC has ever been paid a salary. Id. In addition, WDLP's 2004 federal tax return reflects that the LLC had a net loss for all of 2004. Id. In sum, this is a compelling showing of severe financial hardship. Accord Grant of Waiver to WDLP for 2004 Regulatory Fees, January 12, 2005 (Letter Decision).

Furthermore, there are additional compelling and extraordinary reasons why the public interest would be best served by the FCC's grant of this Request. First, full power Station WDLP-TV is assigned to the Miami-Fort Lauderdale DMA but, in fact, is licensed to and broadcasts from Key West, FL, more than 120 miles southwest of Miami; the Station's Grade B signal does not extend even half-way up the sparsely populated Florida keys, much less into Dade or Broward Counties or the city of Miami.⁵ The FCC

⁴ Even when interest expense is excluded, WDLP's net ordinary loss is more than one million dollars. Id.

⁵ Official notice (from the Station's Form 302 application on file at the FCC) requested.

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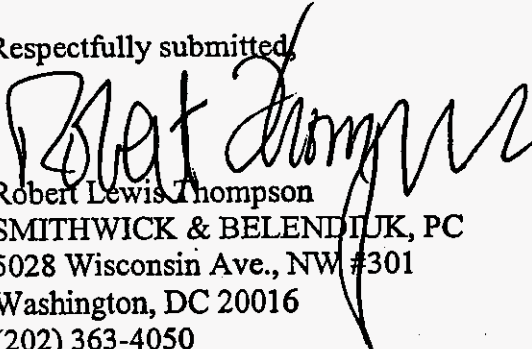
has recognized that relief from the FCC's annual regulatory fee obligations is appropriate for such stations. See 10 FCC Rcd at 12763 para. 21. In addition, special consideration also should be given because primary station WDLP-TV, while assigned to the nation's 17th largest DMA, is not only located outside of Miami's "metropolitan area and do[es] not provide a Grade B signal to a substantial portion of the market," the Station lacks any network affiliation, a factor recognized by the FCC as worthy of consideration in regulatory fee waiver cases. See 10 FCC Rcd at 12763 para. 21.

Second, the programming of primary Station WDLP-TV, which was largely an "infomercial" TV station until acquired by the De La Pena Family in 2003, was "re-launched" less than 24 months ago and, from the outset, WDLP-TV has achieved both critical acclaim and ratings that often match those of the local flagship station of network giant NBC/Telemundo.⁶ Indeed, WDLP-TV is presently the only full-power TV station in the United States that broadcasts LIVE, LOCAL PRIMETIME programming in Spanish, most of which is directed to the discussion of controversial issues of public importance. This Station is endeavoring to present precisely the type of LOCAL programming that the FCC has urged licensees to broadcast. See Localism Rulemaking, Notice of Inquiry, FCC 04-129, released July 1, 2004. As explained by one of the LLC members, WDLP already has had to cancel certain of its acclaimed LOCAL, PRIMETIME programming because of the extent of unforeseen operating losses; the licensee is striving to cut expenses further and, in that context, a forced payment of FCC regulatory fees likely could contribute to the need for further programming cutbacks. See Appendix A.

⁶ See Miami Herald, August 16, 2004 (www.miami.com/mld/miamiherald/business/9396374.htm).

In sum, it is not only the Licensee's dire financial straits and continuing operating losses that make this a compelling case for the FCC's grant of a waiver of the 2005 Annual Regulatory Fees, but this also is an extraordinary case where the Licensee's commitment to LOCAL, PRIMETIME programming in Spanish – even in the midst of staggering financial losses in the millions of dollars – that overwhelmingly makes this Request an appropriate one where a waiver from the FCC's annual regulatory fees is manifestly in the public interest. See 10 FCC Rcd at 12762 para. 13. Thus, just as the FCC properly concluded that the public interest favored a waiver of the 2004 Annual Regulatory Fees for WDLP, we respectfully submit that the need for a waiver for this Licensee in 2005 is just as great.

Respectfully submitted,



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August 31, 2005